

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESUS VARGAS,

X

07 Civ. 2911 (PAC) (AJP)

Plaintiff,

AFFIDAVIT OF
LLOYD A. KATZ

- against -

LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,

Defendants.

-----X

STATE OF NEW YORK :)
COUNTY OF NEW YORK :)

LLOYD A. KATZ, being duly sworn, deposes and says:

1. I am an attorney with CARLOS & KATZ, ESQS., attorneys for the plaintiffs, JESUS VARGAS, and as such am fully familiar with all the facts and circumstances set forth herein.
2. This affidavit is submitted in support of the within motion requesting an order directing that the Court remand the entire action back to the State Supreme Court, Bronx County, on the grounds that together with such other and further relief as to this Court may deem just, proper and equitable.
3. The basis of this application is the apparent un-timeliness of the Notice of Removal dated April 11, 2007.
4. The within action arises from an incident occurring on October 23, 2003 when the plaintiff, JESUS VARGAS, a pedestrian, alleges to have sustained personal injuries when was struck by a vehicle owned by the defendant, FEDERAL EXPRESS CORP. and operated by the defendant LEONARDO RODRIGUEZ on Hunts Point Avenue at or near the intersection of Garrison Street, Bronx, New York.
5. A copy of what appears to be the police report for the subject incident is attached hereto as Exhibit "A". It indicates the home address of the defendant, LEONARDO RODRIGUEZ, as 414 East 204th Street, Apt. 9J, Bronx, New York.
6. A summons and verified complaint, attached as Exhibit "A" to the Affidavit of Mr. Eckert dated May 16th, 2007 in support of defendants opposition to the instant application to remand, lists plaintiff's home address that is indicated on the aforesaid police report on the face of the summons.
7. Paragraph "3" of the aforesaid complaint states that "Plaintiff was and still is a resident of the Bronx".
8. Subsequently, your deponent's office received and answer on behalf of the defendant.

Annexed as Exhibit "B" to the Affidavit of Mr. Eckert dated May 16th, 2007 in support of defendants opposition to the instant application to remand, is a copy of the answer submitted on behalf of the defendants, FEDERAL EXPRESS CORP. and LEONARDO RODRIGUEZ.

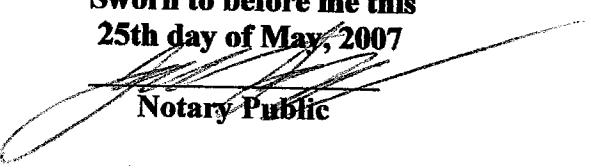
9. The aforesaid Answer is dated January 31, 2007 and according to the date stamp thereon was filed with the Clerk of Bronx County on February 1, 2007.
10. Mr. Eckert states on page 2, paragraph 4 of his Affidavit dated May 16, 2007 that "Apparently, plaintiff did not confirm whether defendant RODRIGUEZ was still residing in the Bronx".
11. Apparently, neither did the attorney for Mr. Rodriguez.
12. Certainly by the time the Answer was interposed on January 31, 2007 counsel should have been cognizant of his client's place of citizenship, particularly where defendants shared a prior relationship as employer and employee and defendants were represented by same attorney.
13. It is respectfully submitted that the Notice of Removal is late pursuant to the provisions contained in 28 U.S.C.A. 1446 in that it had to be filed within 30 days of the completion of service which would appear to have been upon the filing of the affidavits of service on the defendants with the office of the County Clerk, Bronx County on December 20, 2006.
14. The Affidavit of the defendant, LEONARDO RODRIGUEZ, is silent as to when he purportedly moved from the address listed on the police report, other than he no longer lived there at the time of the purported service.
15. Attached hereto as Exhibit "B" is a copy of what is delineated thereon as "RECORD EXPANSION FOR RODRIGUEZ, LEONARDO" dated April 25, 2007, which lists his home address as the address on the police report.
16. It is also respectfully submitted that the Court should be then be remanded to the State Supreme Court, Bronx County for disposition.

WHEREFORE, it is respectfully requested that the instant motion be granted, remanding the present action back to Supreme Court of the State of New York, County of Bronx, under Index number 22230/06 for disposition, together with such other and further relief as this Court may deem just, proper and equitable.



LLOYD A. KATZ

Sworn to before me this
25th day of May, 2007



Notary Public

JORDAN SCHIFF
Notary Public, State Of New York
No. 02SC5082029
Qualified In New York County
Commission Expires 7/14/2007

AFFIDAVIT OF SERVICE

**STATE OF NEW YORK }
ss:
COUNTY OF NEW YORK }**

LLOYD A. KATZ, being duly sworn, deposes and says:
That deponent is not a party to the action, is over 18 years of age and resides in
the County of Kings, State of New York.

That on May 25 2007, deponent served the within:

AFFIDAVIT OF LLOYD A. KATZ

upon:

ANTHONY W. ECKERT III, ESQ.
Attorney for Defendants
Federal Express Corporation and
Leonardo Rodriguez
555 Fifth Avenue
15th Floor
New York, NY 100017
(212) 922-0450

The address designated by said attorneys for that purpose, by depositing a true copy of the same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State.

**Sworn to before me this 25th
day of May, 2007**

~~NOTARY PUBLIC~~

JORDAN SCHIFF
Notary Public, State Of New York
No. 02SC5082029
Qualified In New York County
Commission Expires 7/14/2007

Exhibit A

Precinct No.	1081
Accident No.	1081

York State Department of Motor Vehicles
POLICE ACCIDENT REPORT (NYC)
 MV-104AN (7/01)

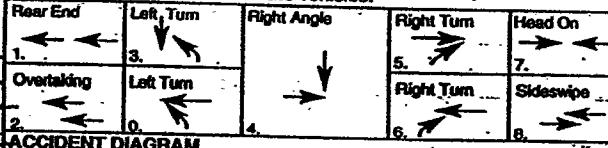
ORIGINAL

1	2	Accident Date Month Day Year 10 23 2003	Day of Week THUR	Military/Time 1847	No. of Vehicles 1	No. Injured 1	No. Killed 0	<input type="checkbox"/> AMENDED REPORT	11-7-03
2	3	VEHICLE 1				VEHICLE 2			
2	3	Vehicle ID - Driver License ID Number 230 374 123			State of Lic. NY		Vehicle ID - Driver License ID Number VARGAS JESUS		
2	3	Driver Name - exactly as printed on license Rodriguez, LEONARDO			Address (Include Number & Street) 414 E 24th STREET		Driver Name - exactly as printed on license VARGAS JESUS		
2	3	City or Town Bronx			Apt. No. 95		Address (Include Number & Street) 854 Hunts Point		
2	3	Date of Birth Month Day Year 1 1 01			Sex M		City or Town Bronx		
2	3	Unlicensed <input type="checkbox"/>			No. of Occupants 1		State NY		
2	3	Public Property Damaged <input type="checkbox"/>			Zip Code 10867		Zip Code 10867		
2	3	Name - exactly as printed on registration FEDERAL EXPRESS CORP			Sex M		Date of Birth Month Day Year 1 1 01		
2	3	Address (Include Number & Street) 900 MIDLAND DR			Apt. No. 08254		Name - exactly as printed on registration FEDERAL EXPRESS CORP		
2	3	City or Town MOUNT LAUREL NJ			Zip Code 08054		Sex M		
2	3	Plate Number 18271AB			State of Reg. NYS		Date of Birth Month Day Year 1 1 01		
2	3	Vehicle Year & Make 1995 Ford Econ			Vehicle Type Ins. Code 481		Address (Include Number & Street) 900 MIDLAND DR		
2	3	Ticket/Accident Number(s)			Apt. No. 08254		City or Town MOUNT LAUREL NJ		
2	3	Violation Section(s)			Zip Code 08054		State of Reg. NYS		
2	3	Violation Section(s)			Vehicle Year & Make 1995 Ford Econ		Vehicle Type Ins. Code 481		

6	1	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		
7	1	VEHICLE 1 DAMAGE CODES		
1	1	Box 1 - Point of Impact Box 2 - Most Damage	1	2
1	1	Enter up to three more Damage Codes	3	4
1	1	Vehicle By Towed: To	HA	

6	1	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		
7	1	VEHICLE 2 DAMAGE CODES		
1	1	Box 1 - Point of Impact Box 2 - Most Damage	1	2
1	1	Enter up to three more Damage Codes	3	4
1	1	Vehicle By Towed: To	HA	

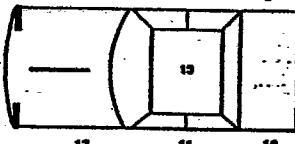
Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.



ACCIDENT DIAGRAM

VEHICLE DAMAGE CODING:

1-13. SEE DIAGRAM ON RIGHT.
 14. UNDERCARRIAGE 17. DEMOLISHED
 15. TRAILER 18. NO DAMAGE
 16. OVERTURNED 19. OTHER



Cost of repairs to any one vehicle will be more than \$1000.00
 Unknown/Unable to Determine Yes No

Reference Marker	Coordinates (if available)	Place Where Accident Occurred: <input type="checkbox"/> BRONX <input type="checkbox"/> KINGS <input type="checkbox"/> NEW YORK <input type="checkbox"/> QUEENS <input type="checkbox"/> RICHMOND
	Latitude/Northing:	Road on which accident occurred: Hunts Point
	Longitude/Easting:	at 1) Intersecting street: GARRISON (Route Number or Street Name)
		or 2) <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W of _____ (Route Number or Street Name)
		Feet Miles

(Nearest Intersection/Route Number or Street Name)

Accident Description/Officer's Notes AT T10/0 VEH 1 STATES HE WAS ON A red light on Hunts Point Facing E/B WHEN The light turn green HE STATES THE PEDESTRIAN walked in front of the TRUCK. PEDESTRIAN STATES HE had the walk signal when HE STATES THE PBD EX TRUCK Struck him. PEDESTRIAN IS APPARENTLY INJURED.

ALL INVOLVED	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only
A	P																				Rodriguez, LEONARDO	
B																					VARGAS JESUS	
C																						
D																						
E																						
F																						

FAMILY			(Letter designation of persons killed or injured must correspond with letter designation on front).							
			M.I.	D. Last Name			First		M.I.	
			Address							
Date of Birth Month Day Year		Telephone (Area Code) ()		Date of Birth Month Day Year		Telephone (Area Code) ()				
Last Name VARGES		First Jesus		M.I. M		E. Last Name		First		M.I.
Address 854 Hink Road										
Date of Birth Month Day Year		Telephone (Area Code) ()		Date of Birth Month Day Year		Telephone (Area Code) ()				
Last Name First				M.I.		Highway Dist. at Scene? □ Yes □ No				
Address First						Name:				
Date of Birth Month Day Year		Telephone (Area Code) ()							Shield No.	

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1 15A-H07934105

Vehicle No. 2 _____

Expiration Date 10/1/04

Expiration Date _____

N N/A

VIN _____

ATTACHMENT (Attach separate sheet, if necessary)

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____

DUPLICATE COPY REQUIRED FOR:

<input type="checkbox"/> Dept. of Motor Vehicles (if anyone is killed/injured)	<input type="checkbox"/> Motor Transport Division (P.D. vehicle involved)	<input type="checkbox"/> NYC Taxi & Limousine Comm. (if a Licensed taxi or limousine involved)
<input type="checkbox"/> Office of Comptroller (if a City vehicle involved)	<input type="checkbox"/> Personnel Safety Unit (if a P.D. vehicle involved)	<input type="checkbox"/> Other City Agency (Specify) _____
		<input type="checkbox"/> Highway Unit _____

NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who was notified. In either case, give date and time of notification.)

PROPERTY DAMAGED (other than vehicles)		OWNER OF PROPERTY (include city agency, where applicable)			
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

NYPD VEHICLE IS INVOLVED:

Police Vehicle-Operator's First Name	Last Name	Rank	Shield No.	Tax ID. No.	Command
--------------------------------------	-----------	------	------------	-------------	---------

Make of Vehicle	Year	Type of Vehicle	Plate No.	Dept. Vehicle No.	Assigned To What Command
-----------------	------	-----------------	-----------	-------------------	--------------------------

Equipment in Use At Time of Accident

Siren Horn Turret Light 4-Way Flasher High-Level Warning Lights Traffic Cones Headlights

ACTIONS OF POLICE VEHICLE

<input type="checkbox"/> Responding to Code Signal _____	<input type="checkbox"/> Complying with Station House Directive _____
<input type="checkbox"/> Pursuing Violator _____	<input type="checkbox"/> Routine Patrol _____
<input type="checkbox"/> Other (Describe) _____	

Exhibit B

TODAY'S DATE: 5/25/2007 TIME: 13:07:90
*RECORD EXPANSION FOR: RODRIGUEZ, LEONARDO

RODRIGUEZ, LEONARDO
414 E 204TH ST 4J
BRONX NY 10467

CLIENT ID#: 230374123
DOB: 01/01/1981 SEX: M
HEIGHT: 5-10 EYE COLOR: BROWN
COUNTY: BRON
MI #: R15161 95651 360656-81

LICENSE CLASS: *D*
COMMERCIAL STATUS: SURRENDERED
PERMIT CLASS: B
APPLICATION DATE: 03/01/2004
ENDORSEMENTS: PASSENGER
RESTRICTIONS: NONE
PERMIT CLASS: M
APPLICATION DATE: 03/28/2000
ENDORSEMENTS: NONE
RESTRICTIONS: NONE

STATUS: SURRENDERED EXPIRATION: 01/01/2010
STATUS: SURRENDERED EXPIRATION: 03/01/2005
STATUS: SURRENDERED EXPIRATION: 03/28/2001

*** ENTER NEXT FUNCTION CODE NEXT *** (RECORD CONTINUED ON FOLLOWING PAGE)

***** ACTIVITY *****
DOCUMENT SURRENDERED ON: 04/09/2004 TO FL

***** CONVICTIONS/BAIL FORFEITURES *****
CONVICTION: FLD TO STOP-SCHL BUS
VIOLATION: 09/12/2003 CONVICTED ON: 04/23/2004
LOCATION: BRONX COUNTY, ADMINISTRATIVE ADJUDICATION
PENALTY: FINE- \$250 POINTS: 5
COMM VEH: UNKNOWN HAZMAT: UNKNOWN

*** END OF RECORD ***

STATE OF NEW YORK }
 ss:
COUNTY OF NEW YORK }

LLOYD A. KATZ, being duly sworn, deposes and says:
That deponent is not a party to the action, is over 18 years of age and resides in
the County of Kings, State of New York.

That on May 25 2007, deponent served the within:

AFFIDAVIT OF LLOYD A. KATZ
upon:

ANTHONY W. ECKERT III, ESQ.
Attorney for Defendants
Federal Express Corporation and
Leonardo Rodriguez
555 Fifth Avenue
15th Floor
New York, NY 100017
(212) 922-0450

The address designated by said attorneys for that purpose, by depositing a true
copy of the same enclosed in a postpaid properly addressed wrapper, in an
official depository under the exclusive care and custody of the United States
Postal Service within New York State.

Sworn to before me this 25th
day of May, 2007


NOTARY PUBLIC

JORDAN SCHIFF
Notary Public, State Of New York
No. 02SC5082029
Qualified In New York County
Commission Expires 7/14/2007


LLOYD A. KATZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JESUS VARGAS,

07 Civ. 2911 (PAC) (AJP)

Plaintiff,

- against -

LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,

Defendants.

-----X

AFFIDAVIT OF
LLOYD A. KATZ

CARLOS & KATZ, ESQS.
LLOYD KATZ (LK-8498)
Attorney for Plaintiff
352 Seventh Avenue
Suite 409
New York, New York 10001
(212) 631-7442

ANTHONY W. ECKERT III, ESQ.
Attorney for Defendants
Federal Express Corporation and
Leonardo Rodriguez
555 Fifth Avenue
15th Floor
New York, NY 100017
(212) 922-0450